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April 11, 2024

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Via ECF

Honorable Arun Subramanian
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Avraham Eisenberg
23 Cr. 10 (AS)

Dear Judge Subramanian:

Per the Court's request earlier today, defendant Avraham Eisenberg respectfully submits the following proposed jury instruction regarding terms of service:

Terms of Service

You have heard evidence of terms of service / terms of use for AscendEx, FTX, and Switchboard,¹ including testimony of the terms themselves that made reference to terms like "manipulation," "unlawful," and "fraud." Those terms of service / terms of use were not offered to define the relevant law in this case. Instead, I am now instructing you on the law and definitions of terms, and you should only use the definitions I provide. Further, a violation of terms of service / terms of use is a civil matter. This, of course, is a criminal case, not a civil case for breach of contract. If you find that the defendant violated any of those terms of service / terms of use, that does not, by itself, mean that the defendant has committed a crime. In determining whether the defendant has committed any of the charged offenses, you are to apply the instructions I have give you today. Terms of service / terms of use are simply evidence that you may give as much, or as little weight, as you see appropriate.

¹ The defense understands that the Court is re-considering its previous denial of the defense's objections to the admission of the Switchboard terms of service (GX-872). See 4/11/24 Transcript 511-517.

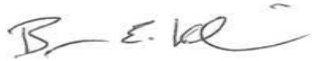


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Respectfully submitted,



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